

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2005-063-FH

GARRETT ANTHONY PINKLEY,

Defendant.

OPINION AND ORDER
OF THE COURT

Defendant moves for reconsideration of this Court's order dated June 29, 2006, sentencing defendant to 1-4 years for probation violation.

Defendant was initially charged in this case with cocaine possession less than 25 grams, contrary to MCL 333.7403(2)(a)(v) (count I) and operating while intoxicated, contrary to MCL 257.625(1) (count II). Defendant waived a preliminary examination and was bound over on the charges on January 4, 2005, by the Hon. Dawnn M. Gruenburg of the 37A District Court. On April 27, 2005, defendant pled guilty to count I, and an added count III, operating while impaired, contrary to MCL 257.625(3), in exchange for dismissal of count II. Defendant was afforded "7411 status" pertaining to the drug possession charge, under which the Court deferred entering a judgment of guilt for possession by placing defendant on probation instead. Defendant received two years probation for count I, to run concurrent with count 3, restricted license for 90 days.



Other terms of probation applied, including no use of alcohol or drugs. Subsequently, defendant tested positive for cocaine on September 15, 2005; defendant had also failed to participate in treatment as directed. A bench warrant was issued on December 16, 2005. Defendant was arraigned on January 17, 2006, and released on personal bond. Defendant pled guilty on February 2, 2006, and probation was continued on the same terms. Additionally, defendant was ordered to complete the PA 511 intensive urinalysis program. Defendant again tested positive for cocaine on May 25, 2006. A bench warrant was issued on June 9, 2006. The probation revocation hearing was held on June 29, 2006. The Court found defendant guilty of using cocaine on two instances, violating probation. Probation was terminated, and defendant's 7411 status was revoked. Defendant was sentenced to 1-4 years; the Court found compelling reasons to deviate above guidelines. Defendant now moves for reconsideration.

Defendant notes he is 32 years old, is a Mott High School graduate, has 2 years of college credit, and lives with his mother, grandmother and brother. Defendant asserts he has been employed with Marksman Roofing for 10 years and provides income to the family. Defendant further avers he cares for his deathly ill brother who needs a heart transplant, and his grandmother who is currently diagnosed with cancer. Defendant maintains his family needs his income to survive. Defendant asserts he was attending counseling sessions and narcotics anonymous classes prior to the June 29, 2006, sentencing. Defendant contends the probation department had recommended 90 days in the Macomb County Jail as a sentence, which was not objected to by the prosecutor's office. Defendant states that he understands that he probably does not deserve any further chances, but prays that this Court give him one further chance to

atone for his irresponsible and shameful conduct, and to prove himself to the Court and his family.

Motions for reconsideration are provided for at MCR 2.119. A motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion. MCR 2.119(F). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Michigan courts have recognized that conduct underlying a probation violation may serve as a substantial and compelling basis for departure from the sentencing guidelines. *People v Schaafsma*, 267 Mich App 184, 185; 704 NW2d 115 (2005). Putting conduct aside, "any probation violation represents an affront to the court and an indication of an offender's callous attitude toward correction and toward the trust the court has granted the probationer." *Schaafsma*, 185-186. The offender's probation violation itself is an objective and verifiable factor worthy of independent consideration. *Schaafsma*, 186. Because the probation violation is objective and verifiable, the trial

court in its discretion may conclude that the factor provides a substantial and compelling reason to depart from the sentencing guidelines. *Schaafsma*, 186.

The Court is not persuaded to grant reconsideration in this case. Defendant has been provided several opportunities to avoid being assigned to the Department of Corrections. Defendant was afforded 4711 status. Defendant was then placed back on probation after he tested positive for cocaine, violating his probation, the first time. Defendant was not contrite at the hearing on the second probation violation. While the probation officer stated that the cocaine test was greater than 99% reliable, defense counsel argued that there could be a problem with the urinalysis itself, denying defendant took cocaine. Defendant stated under oath that he had not taken cocaine since February of 2006. The Court did not find, and still does not find, such statements believable. The Court remains persuaded that it had compelling reasons for exceeding the guidelines under these circumstances. Specifically, as the Court stated at the hearing, the guidelines do not contemplate repeated violations. The Court remains persuaded that a sentence within the guidelines does not address the repeated violations in this case.

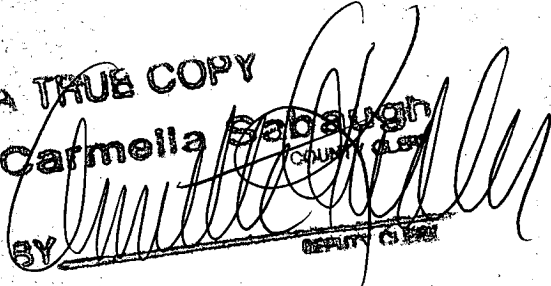
IT IS SO ORDERED.

Dated: August 3, 2006

cc: Yasmine Isshak, Ass't Pros Atty
Christopher T. Fischer, Atty for Deft


MARY A. CHRZANOWSKI
Circuit Court Judge

A TRUE COPY


Carmella Sebaugh
COUNTY CLERK

BY

COUNTY CLERK